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Claims 1-16 are rejected under the judicially created Doctrine of Obvious-Type Double Patenting as being unpatentable over Claims 1-10 of Matsushita. In response, Applicant submits a terminal disclaimer.

Claims 1-4 and 7-16 stand rejected under 35 U.S.C. § 103; Claims 1-16 stand rejected under the judicially created Doctrine of Obviousness-Type Double Patenting; Claims 1-16 remain pending; Claims 26 and 27 have been added.

Applicant respectfully submits that Claims 26 and 27 are in a condition for allowance. Claim 26 is a combination of Claims 2, 3 and 5 and Claim 27 is a combination of Claims 2, 3 and 6. Neither of these combinations of limitations has been rejected by the Patent Office as being obvious in view of Matsushita under 35 U.S.C. § 103. In light of the terminal disclaimer filed herewith, Applicant respectfully submits that Claims 26 and 27 are allowable.

Claims 1-4 and 7-16 remain rejected under 35 U.S.C. § 103 as being unpatentable over Matsushita. However, the Patent Office admits that Matsushita discloses only a single anodizing step to produce a single porous layer disposed between the substrate and the subsequently formed semi-conductor film. The Patent Office admits that Matsushita does not teach or suggest the formation of two layers, one of which has a lower porosity to facilitate the separation of the semi-conductor film from the substrate. Further, the Patent Office admits that Matsushita does not make any specific suggestion in this regard.

Instead, the Patent Office's rejection relies upon In re Harza, 124 U.S.P.Q. 378, 380 (CCPA 1960) for the proposition that "the mere duplication of parts is obvious". However, Applicant respectfully submits that the Patent Office's reliance upon Harza is misplaced.

Specifically, in Harza, the claims were directed toward a waterproofing structure for placement between two masonry masses. The claims at issue in Harza differed from the prior art in only one respect -- the claims at issue required "a plurality of elongated ribs" while the prior art reference disclosed only a single rib ("the only distinction to be found is in the recitation of Claim 1 of a plurality of ribs on each side of the web whereas Gardner shows only a single rib on each side of the web"). Id. at 380. Further, the specific holding of Gardner is as follows: "It is well settled that the mere duplication of parts has no patentable significance unless a new and unexpected result is produced, and we are of the opinion that such is not the case here." Id.

In contrast, Claims 1 and 2 require the formation of two different porous layers having different porosities. These porous layers are not identical and independent Claims 1 and 2 require that the porous layers not be identical. Further, Claims 1 and 2 require that the second subsequently applied layer have a porosity that is greater than the porosity of the first layer. Thus, porous layers are not merely duplicated as the longitudinal ribs were duplicated in Harza. A second subsequent porous layer is formed to facilitate the separation of the semi-conductor film from the

substrate. The creation of a second more porous layer is simply not taught or suggested by Matsushita. Further, in light of the fact that the second more porous layer is not a mere duplication of the first porous layer, Applicant respectfully submits that Harza is distinguishable and inapplicable to the present application.


Further, in the Office Action mailed on December 3, 1998, at page 4, the Patent Office takes official notice that "varying the anodization current density will vary the porosity of the resulting film and that impurity doped substrates are an obvious substitution for the substrate due to their ready availability." However, as set forth in the specification at page 13, lines 15-17, the structure of the porous layer can be changed by a variety of conditions. Applicant has found that changing the current density is a preferred way to change the porosity of the layer. Applicant further respectfully submits that such knowledge is not "of such notorious character that official notice can be taken". MPEP § 2144.03. Therefore, Applicant challenges the official notice taken on page 4 of the December 3, 1998 Office Action.

Further, with respect to Claim 2, Matsushita in no way teaches or suggests any solution to a problem whereby the formation of a second porous layer on a first porous layer results in a fragile bond between the two layers due to the strain caused by the differences between the lattice constants of the two layers. Further, Matsushita does not teach or suggest the formation of a third layer or an intermediate porosity layer to solve this problem. See the specification at page 11, line 22 through page 12, line 23.

Therefore, in light of the benefits provided by the third intermediate layer and the unique method recited in Claim 2, Applicant further respectfully submits that Claim 2 is allowable for these additional reasons.

In light of the remarks set forth above and further in light of the clear allowability of Claims 26 and 27, Applicant respectfully submits that this application is now in a condition for allowance and an early action so indicating is respectfully requested.

Respectfully submitted,

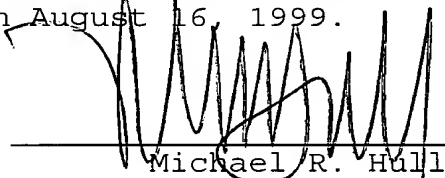


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I hereby certify that this correspondence is being delivered by the United States Postal Service as First Class Mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231 on August 16, 1999.


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